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No. 81-61

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

GRACIE ROBINSON and **JUANITA HAGER**, on behalf of themselves and all other persons similarly situated, *Respondents*

versus

UNITED MINE WORKERS OF AMERICA HEALTH AND RETIREMENT FUNDS; JULIUS MULLINS, KENNETH L. HOUCK and **PAUL R. DEAN**, Trustees of the United Mine Workers of America Health & Retirement Funds, *Petitioners*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether arbitrary and capricious employee benefit plan provisions which violate Section 302(c)(5) of the Labor Management Relations Act can be justified by a mere showing that the provisions were the subject of collective bargaining.

TABLE OF CONTENTS

	PAGE
Question Presented	i
Table of Authorities	iii–iv
Counterstatement of the Case	1– 3
Reasons for Not Granting the Writ	3–10
I. The decision below holds that Section 302 trusts are subject to judicial review for illegality and is consistent with federal labor policy and the intent of Congress	3– 8
II. The decision below does not require collective bargainers to bargain to impasse over retirees' benefits and is not in conflict with applicable decisions of this Court	8–10
Conclusion	10

TABLE OF AUTHORITIES

Cases:

PAGE

Allied Chemical & Alkali Workers v. *Pittsburgh Plate Glass*, 404 U. S. 157 (1971) 4, 7, 8, 9

Brotherhood of Railroad Trainmen v. *Howard*, 343 U. S. 768 (1952) 4, 5

Danti v. *Lewis*, 312 F. 2d 345 (D. C. Cir. 1962) 5

Gaydosh v. *Lewis*, 410 F. 2d 262 (D. C. Cir. 1969) .. 5

Johnson v. *Botica*, 537 F. 2d 930 (7th Cir. 1976) ... 4

Kosty v. *Lewis*, 319 F. 2d 744 (D. C. Cir. 1963), *cert. denied*, 375 U. S. 964 (1964) 5

Lee v. *Nesbitt*, 453 F. 2d 1309 (9th Cir. 1972) 4

N.L.R.B. v. *Amax Coal Co.*, ____ U. S. ____, 101 S. Ct. 2789 (1981) 4, 5, 7, 8

N.L.R.B. v. *Magnavox Co.*, 415 U. S. 322 (1974) ... 4

Norton v. *I.A.M. Nat'l Pension Fund*, 553 F. 2d 1352 (D. C. Cir. 1977) 4

Pete v. *U.M.W.A. Welfare & Retirement Fund of 1950*, 517 F. 2d 1275 (D. C. Cir. *en banc* 1975) .. 4– 5

Roark v. *Boyle*, 439 F. 2d 497 (D. C. Cir. 1970) 5

Roark v. *Lewis*, 401 F. 2d 425 (D. C. Cir. 1968) 5

Steele v. *Louisville and Nashville R.R. Co.*, 323 U. S. 192 (1944) 4, 5

Statutes:

Labor Management Relations Act, Section 302(c)(5), 29 U.S.C. §186(c)(5) 3, 4, 5, 6, 7, 8, 10

Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001, *et seq.* 6

National Labor Relations Act, Section 8(b)(3), 29 U.S.C. §158(b)(3) 5, 9, 10

Miscellaneous:

	PAGE
93 Cong. Rec. 4753, 2 Leg. Hist. LMRA, at 1322....	6
93 Cong. Rec. 4886, 2 Leg. Hist. LMRA, at 1322....	6
93 Daily Cong. Rec. 4805, May 7, 1947.....	5, 6
H.R. Rep. No. 93-533, 93d Cong. 2d Sess. (1974), 1974 U. S. Cong. Admin. News 4650-4651.....	7
H.R. Conf. Rep. No. 510, 80th Cong., 1st Sess., at 66-67, 1 Leg. Hist. LMRA, at 570	6

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v.

UNITED MINE WORKERS OF AMERICA HEALTH AND RETIREMENT FUNDS;
JULIUS MULLINS, KENNETH L. HOUCK and PAUL R. DEAN, Trustees of the United Mine Workers of America Health & Retirement Funds, *Petitioners*

ON PETITION FOR A WRIT OF CERTIORARAI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

COUNTERSTATEMENT OF THE CASE

Respondents' class consists of surviving dependents of active coal miners who were qualified for retirement pensions by age and length of service but chose instead to continue working and died before retiring. Respondents challenged the legality of certain employee benefit trust provisions which, *inter alia,* granted health care coverage to the survivors of some deceased miners

who had as little as one year of contributory service and which denied those same benefits to the survivors of other deceased miners, some of whom had more than twenty years of contributory service. (App. A at 10a).

Respondent Gracie Robinson is the widow of Floyd Robinson. When he died in 1967, pension eligibility required attainment of age 55 and twenty years of employment, including one year of contributory employment. (App. A at 5a, n. 12). At the time of his death, Floyd Robinson was fifty-five years old, and was actively employed by a contributory employer. He had worked for more than 25 years in the coal industry, of which 21 years were in contributory service. (App. A at 5a, n. 12).

Respondent Juanita Hager is the widow of Paul Hager. At the time of Paul Hager's death, pension eligibility required attainment of age 55, twenty years of service, of which five had to be contributory, and the one year of employment immediately prior to retirement had to be with a contributory employer. Paul Hager, who was an active employee at the time of his death, had been credited with 24 years of contributory service. (App. A at 5a, n. 12).

The 1950 Benefit Trust provides permanent health care coverage to the unremarried spouse and dependent children of a miner who dies while receiving a pension under the 1950 Pension Fund. (App. M at 114a). The trustees have applied this provision in such a manner that it grants benefits to survivors of miners who died while collecting pensions, as well as to the survivors of miners who, although not actually receiv-

ing pensions, had stopped work and filed applications for pensions. (App. A at 5a-6a). The trustees have provided this coverage to widows whose decedents had as little as one year of contributory work, and yet they have refused to provide it to Respondents, whose decedents had far greater histories of contributory work, solely because Respondents' husbands died while actively employed in the coal industry. (App. A at 10a). Respondents brought suit in federal district court, charging that the trust provisions and the trustees' actions violated §302(c)(5) of the Labor Management Relations Act (LMRA). The District Court entered judgment for the Petitioners and the Court of Appeals reversed, holding that the eligibility provisions "transgress federal law and consequently are forbidden, even as the fruits of labor negotiations." (App. A at 2a).

REASONS FOR NOT GRANTING THE WRIT

I.

The Decision Below Holds That Section 302 Trusts Are Subject to Judicial Review for Illegality and Is Consistent With Federal Labor Policy and the Intent of Congress.

The Court of Appeals held that certain provisions of the UMWA 1950 Benefit Trust violated LMRA §302(c)(5) and that the inclusion of the trust provisions in a collectively bargained agreement did not justify the unlawful provisions. (App. A at 11a-12a). The trustees do not now challenge whether those provisions were arbitrary and capricious and thus in vio-

lation of §302(c)(5). Instead, the trustees now take the position that because the eligibility provisions were collectively bargained the substance of those provisions are beyond the grasp of judicial review. The trustees' position is clearly contrary to federal labor law, as explained in the well reasoned decision of the Court of Appeals. (App. A).

Although this Court has held that retirees' benefits are not a mandatory subject of collective bargaining, *Allied Chemical & Alkali Workers* v. *Pittsburgh Plate Glass,* 404 U. S. 157 (1971), this Court has never ruled that unlawful terms of a collectively bargained agreement are insulated from judicial review. To the contrary, this Court has consistently held that the substantive terms of collectively bargained agreements are subject to judicial review and that agreements which contravene federal law must be stricken. *Steele* v. *Louisville and Nashville R.R. Co.,* 323 U. S. 192 (1944); *Brotherhood of Railroad Trainmen* v. *Howard,* 343 U. S. 768 (1952); *N.L.R.B.* v. *Magnavox Co.,* 415 U. S. 322 (1974).

Section 302(c)(5) exacts a strict duty that employee benefit trusts be established and used for the sole and exclusive benefit of contributory employees and their dependents. *N.L.R.B.* v. *Amax Coal Co.,* —— U. S. ——, 101 S. Ct. 2789 (1981). It is well settled that arbitrary and capricious denials of benefits violate §302(c)(5). *Norton* v. *I.A.M. Nat'l Pension Fund,* 553 F. 2d 1352 (D. C. Cir. 1977); *Johnson* v. *Botica,* 537 F. 2d 930, 935 (7th Cir. 1976); *Lee* v. *Nesbitt,* 453 F. 2d 1309, 1311 (9th Cir. 1972); *Pete* v.

U.M.W.A. Welfare & Retirement Fund of 1950, 517 F. 2d 1275, 1283 (D. C. Cir. *en banc* 1975); *Roark* v. *Boyle*, 439 F. 2d 497, 499 (D. C. Cir. 1970); *Gaydosh* v. *Lewis*, 410 F. 2d 262, 265 (D. C. Cir. 1969); *Roark* v. *Lewis*, 410 F. 2d 425, 426 (D. C. Cir. 1968); *Kosty* v. *Lewis*, 319 F. 2d 744, 747 (D. C. Cir. 1963), *cert. denied*, 375 U. S. 964 (1964); *Danti* v. *Lewis*, 312 F. 2d 345, 348 & n.3 (D. C. Cir. 1962).

The decision below, by holding the collectively bargained trust provisions subject to judicial review for illegality, is totally in accord with both the well established case law which has developed under §302(c)(5) and the prior decisions of this Court which have held collectively bargained agreements subject to judicial review. *Steele* v. *Louisville and Nashville R.R. Co.*, 323 U. S. 192 (1944); *Brotherhood of Railroad Trainmen* v. *Howard*, 343 U. S. 768 (1952). By holding trust provisions subject to judicial review for illegality, the decision below properly effectuates the Congressional intent of both NLRA §8(b)(3) and LMRA §302(c)(5).

In enacting §302(c)(5), Congress was aware that employee benefit plans would be included in collectively bargained agreements, and never intended that the inclusion of an employee benefit trust in such an agreement would nullify the protections afforded by §302(c)(5). (See Statement of Senator Ball, 93 Daily Cong. Rec. 4805, May 7, 1947). The legislative history of §302(c)(5) was reviewed by this Court in *N.L.R.B.* v. *Amax Coal Co.*, —— U. S. ——, 101 S. Ct. 2789 (1981):

> . . . [T]he legislative history of the LMRA confirms that §302(c)(5) was designed to reinforce, not alter, the long established duties of a trustee.
>
> . . . Senator Ball stated that "all we seek to do by [§302(c)(5)] is to make sure that the employees whose labor builds this fund and are really entitled to benefits under it shall receive the benefits; that it is a trust fund, and that *if necessary, they can go into court and obtain the benefits to which they are entitled.*" 93 Cong. Rec. 4753, 2 Leg. Hist. LMRA, at 1322; see H.R. Conf. Rep. No. 510, 80th Cong., 1st Sess., at 66-67, 1 Leg. Hist. LMRA, at 570. . . . Senator Taft, the primary author of the entire Act, answered that many existing funds were not created expressly as trusts, and that §302(c)(5)'s requirement that each fund be an express and enforceable trust would ensure that *the future operations of all such funds would be subject to supervision by a court of chancery.* 93 Cong. Rec. 4886, 2 Leg. Hist. LMRA, at 1322. (Emphasis added.)

It is obvious from these statements that Congress never intended §302(c)(5) trusts to be immune from judicial review.

Congressional intent is further evidenced by the enactment of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §1001, *et seq.* ERISA was enacted at a time when the collective bargaining of employee retirement and benefit plans had become commonplace. Yet Congress, instead of limiting the fiduciary duties of those involved with the

It is thus understandable that courts play a somewhat plans or the grounds for judical intervention, codified and strengthened those remedial and fiduciary concepts which have developed from §302(c)(5) and the common law, and expressly left §302(c)(5) in effect. *N.L.R.B.* v. *Amax Coal Co.*, —— U. S. ——, 101 S. Ct. 2789 (1981).[1]

Courts perform a different, more limited role in labor relations cases than in employee benefit trust cases. The difference is logical and consistent with federal labor policy. Violations of labor rights and disputes between labor and management are generally within the exclusive jurisdiction of the NLRB. An employee who has a claim against his employer or union has internal grievance procedures and NLRB remedies as well as judicial remedies. In addition, the employees are represented in the bargaining process. limited role in those areas. Retirees and their dependents, however, are not protected by those rights and procedures which are afforded employees. They are not members of the bargaining unit, and have no voice in the ratification of contracts. *Allied Chemical & Alkali Workers* v. *Pittsburgh Plate Glass,* 404 U. S. 157 (1971). No duty of representation is afforded to them, and the NLRB cannot protect them from wrongful pension denials, trustees' breaches of fiduci-

[1]The legislative history of ERISA shows that it was the intent of Congress that if Settlors promulgated offensive trust provisions, the trustees would have a duty not to follow them. H.R. Rep. No. 93-533, 93d Cong. 2d Sess. (1974), 1974 U. S. Cong. Admin. News 4650-4651.

ary duties or other violations of §302(c)(5). *Allied Chemical & Alkali Workers* v. *Pittsburgh Plate Glass*, 404 U. S. 157 (1971); *N.L.R.B.* v. *Amax Coal Co.*, —— U. S. ——, 101 S. Ct. 2789 (1981).

Accordingly, the Court of Appeals properly held that unlawful trust provisions must be subject to judicial review so as to insure that all beneficiaries are accorded those protections intended by Congress in enacting §302(c)(5).

II.

The Decision Below Does Not Require Collective Bargainers to Bargain to Impasse Over Retirees' Benefits and Is Not in Conflict With Applicable Decisions of This Court.

The Petitioners' assertion that the decision below is contrary to applicable decisions of the Supreme Court is not supported by the proceedings below or by the decision itself. Contrary to the Petitioners' assertions, the Court of Appeals did not decide that §302(c)(5) of the Labor Management Relations Act requires the collective bargaining parties to bargain to impasse on behalf of persons who are not members of the bargaining unit or to bargain to impasse over the issue of retirees' benefits. The issue before the Court of Appeals was whether the trust provisions violated the substantive demands of LMRA §302(c)(5).

The Petitioners misinterpret the decision below in an attempt to find conflict between it and the decisions of this Court. No such conflict exists. This case is

clearly distinguishable on the facts from *Allied Chemical & Alkali Workers* v. *Pittsburgh Plate Glass,* 404 U. S. 157 (1971). In *Allied Chemical & Alkali Workers* the union and the NLRB had charged the employer with an unfair labor practice as a result of the employer's refusal to bargain over an adjustment the employer had made in medical coverage for retirees. This Court ruled that retirees' benefits were not a mandatory subject of collective bargaining. The issue in that case was whether retirement rights were subject to compulsory bargaining, not whether benefit rights were enforceable. *Allied Chemical & Alkali Workers* v. *Pittsburgh Plate Glass,* 404 U. S. 156, n.17 (1971). See National Labor Relations Act, §8(b)(3), 29 U.S.C. §158(b)(3).

The instant case was a challenge to the legality of employee trust provisions which unlawfully provided benefits to the survivors of men who had as little as one year of contributory service, while denying benefits to the survivors of men who had more than twenty years contributory service. The issue in this case is not, and has never been, whether retirees' benefits are a mandatory subject of collective bargaining under NLRA §8(b)(3). Neither the terms nor the effect of the decision below will require collective bargainers to bargain to impasse on any subject. No collective bargainer has been a party to this case, instead, it is the trustees who now raise an issue which was never raised by the collective bargainers themselves. Indeed, the collective bargainers provided in their agreement that the trust provisions could be amended to conform

with federal law. This clearly evidences that the collective bargainers did not perceive a conflict between their bargaining rights and the conformation of the trusts so they would comply with federal law. (National Bituminous Coal Wage Agreement of 1974, App. L at 106a).

If there is a conflict between §302(c)(5) of the LMRA and §8(b)(3) of the NLRA, as Petitioners suggest, such conflict is not presented in this case.

CONCLUSION

WHEREFORE, the Respondents pray that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

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